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GOOGLE LLC

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

MARY L. SMITH, individually and on behalf
of all others similarly situated,

Case No.: 5:23-cv-03527-PCP
(Consol. w/ 5:23-cv-04191-PCP
(Related to 5:22-cv-07557-PCP
 & 5:23-cv-04953-PCP)

v.
GOOGLE LLC

Plaintiff,

**DEFENDANT GOOGLE LLC'S
NOTICE OF MOTION AND MOTION
TO COMPEL ARBITRATION AND TO
STAY CLAIMS; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Date: March 7, 2024
Time: 10 a.m.
Location: Courtroom 8, 4th Floor
Judge: Hon. P. Casey Pitts

**Consolidated Class Action Complaint filed:
10/09/2023**

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE THAT, on March 7, 2024, at 10:00 a.m., the undersigned will
3 appear before the Honorable P. Casey Pitts of the United States District Court for the Northern
4 District of California at the San Jose Courtroom 8, 4th Floor, and shall then and there present
5 Defendant Google LLC (“Google”)’s Motion to Compel Arbitration and to Stay Claims.

6 Based on its understanding that H&R Block intends to move to compel arbitration in the
7 related matter of *Hunt v. Meta Platforms, Inc.*, Google moves for an order compelling Plaintiffs
8 Mary Smith and Cary Goldberg to submit their claims against Google in this action to final and
9 binding individual arbitration. Google seeks this relief on the basis of equitable estoppel, because
10 the claims of Plaintiffs Smith and Goldberg arise solely from their use of H&R Block’s online tax-
11 filing service that is subject to an agreement containing an arbitration clause, and the claims
12 against Google are intimately intertwined with and founded in that agreement. If the court
13 declines to compel Plaintiffs Smith and Goldberg to arbitrate their claims against Google, but
14 compels the *Hunt* plaintiffs to arbitrate their substantially identical claims against H&R Block,
15 Google further seeks a stay of the claims in this action related to H&R Block pending arbitration.
16 This Motion is based on the Memorandum of Points and Authorities below, the pleadings and
17 other papers on file in this action, and upon such other matters as may be presented to the Court at
18 the time of the hearing.

19 **ISSUES PRESENTED**

20 If the court grants H&R Block’s forthcoming motion to compel arbitration in the related
21 case *Hunt v. Meta Platforms Inc.*, whether Plaintiffs in this case who agreed to H&R Block’s
22 arbitration agreement should likewise be compelled to arbitrate their claims against Google under
23 the doctrine of equitable estoppel, and whether claims related to H&R Block should be stayed
24 pending arbitration.

1
2 Date: December 15, 2023
3

WILLKIE FARR & GALLAGHER LLP

4 By: /s/ Benedict Hur
5 Benedict Hur
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Attorneys for Defendant
Google LLC

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Smith and Goldberg (“Plaintiffs”) are two users of H&R Block’s online tax-filing service. They claim H&R Block incorporated Google’s data analytics software in its website, configured the software to collect certain unspecified “tax information,” and has been secretly transmitting this tax data to third parties. Smith and Goldberg agreed to arbitrate their claims against H&R Block by agreeing to Online Services Agreement, and H&R Block intends to move to compel arbitration of those claims in the related *Hunt* matter. But because adding H&R Block as a defendant in this case would undoubtedly lead to enforcement of their arbitration agreement with H&R Block, they seek to obscure this key figure in their claims and bring an action solely against Google. Google therefore brings this motion to compel arbitration of Smith and Goldberg’s claims in this action, if H&R Block successfully moves to compel arbitration in *Hunt*. That motion is forthcoming on February 23, 2024.

California law does not permit plaintiffs to evade their agreement to arbitrate simply by raising, in Plaintiffs' words, "largely identical" claims against a non-signatory to the agreement rather than the signatory. Under the doctrine of equitable estoppel, a non-signatory may enforce an arbitration agreement against a signatory plaintiff in either of two circumstances: (1) when the plaintiff's claims against the non-signatory rely upon, are founded in, or assume the existence of the agreement containing the arbitration clause; or (2) where the plaintiff alleges concerted and interconnected conduct by the signatory and non-signatory, and that conduct is connected to the obligations of the agreement containing the arbitration clause. Plaintiffs' claims satisfy both of these separate tests.

First, Plaintiffs’ claims against Google are inextricably intertwined with their agreement with H&R Block. The relevant claims against Google require consideration of whether Plaintiffs, or H&R Block, consented to the alleged data collection, as well as Plaintiffs’ reasonable expectations of privacy. H&R Block’s Online Services Agreement requires agreement to the company’s Privacy Notice, which discloses the company’s data collection and disclosure practices. Because that agreement put Plaintiffs on notice of H&R Block’s data disclosure

1 practices and required their consent, Plaintiffs' claims against Google are intimately intertwined
 2 with their agreement with H&R Block. Indeed, a claim against Google is *only* possible if the
 3 Court concludes Plaintiffs did not validly consent to H&R Block's alleged data disclosure through
 4 the Online Services Agreement.

5 *Second*, Plaintiffs allege interdependent and concerted conduct of Google and H&R
 6 Block—the collection of data by H&R Block and its disclosure to Google Analytics for
 7 processing. This conduct is directly related to H&R Block's Online Services Agreement and the
 8 incorporated Privacy Notice, which delineate the data H&R Block collects, what it may disclose,
 9 to whom, and the purposes for disclosure. Plaintiffs' claims against Google are therefore
 10 intertwined with their agreement with H&R Block. If the Court finds the *Hunt* plaintiffs' claims
 11 against H&R Block must be arbitrated, Plaintiffs here must also arbitrate their claims against
 12 Google.

13 In the event that the Court compels Plaintiffs to arbitration with H&R Block in *Hunt*, but
 14 not with Google in the instant matter, the Court should stay claims against Google related to H&R
 15 Block until the arbitration against H&R Block is resolved. Doing so promotes efficiency and
 16 economy by avoiding unnecessary discovery related to H&R Block and class members who only
 17 used H&R Block's services. Further, because of the intertwined nature of claims against Google
 18 and H&R Block, the arbitration will require resolution of many of the same issues involved in the
 19 claims against H&R Block. A stay of these claims will avoid the risk of inconsistent results.

20 II. BACKGROUND

21 A. Plaintiffs' Agreements with H&R Block

22 Plaintiffs Smith and Goldberg allege that they used H&R Block's online services to file
 23 their taxes. Compl. ¶¶ 5, 8. At the time of their use, H&R Block allegedly used Google's analytics
 24 pixel. *Id.* In order to use H&R Block's online tax-filing services, users like Smith must agree to
 25 H&R Block's Online Services Agreement ("the Agreement"). Anderson Decl. Ex. A (Schuessler
 26
 27
 28

1 Decl. ¶ 3), Ex. C (Gibson Decl. ¶ 8).¹ Through the Agreement, Smith agreed to resolve all
 2 disputes with H&R Block through binding arbitration before the American Arbitration
 3 Association (“AAA”). *Id.*, Ex. B at 15.

4 The Agreement also provides that use of H&R Block’s online services is subject to the
 5 company’s Privacy Notice. *Id.*, Ex. B at 4; Ex. D at 4. The Privacy Notice informs users of what
 6 data H&R Block collects and to whom it may disclose the information. Specifically, the Privacy
 7 Notice states that H&R Block may collect such information as names, contact information,
 8 financial information, and other data types in the course of using the service. *Id.* Ex. E at 2, 7; Ex.
 9 F at 1, 5. The Privacy Notice also discloses H&R Block’s use of pixels such as Google’s, and
 10 informs users that their information may be disclosed to business partners for data processing,
 11 analytics, and advertising. *Id.* Ex. E at 11; Ex. F at 7.

12 **B. H&R Block’s Use of Google Analytics**

13 Plaintiffs acknowledge that it is the tax-filing companies, like H&R Block, that must decide
 14 to use Google Analytics. *See Compl.* ¶¶ 25 (noting that Google Analytics pixels are something
 15 that “website owners add to their website code for each page of their site”); 36 (H&R Block
 16 deployed the pixel on its website).

17 Plaintiffs also acknowledge that it is the tax-filing companies, like H&R Block, that decide
 18 which data Google Analytics receives. *Id.* ¶¶ 26 (noting websites can configure what data is
 19 collected by their Google Analytics tools); 35 (websites can customize the data they wish to
 20 collect with Google Tag pixel).

21 Finally, Plaintiffs even allege that it is these companies that choose to transmit data to
 22 Google Analytics. *Id.* ¶¶ 32 (“[T]he tax filing services such as H&R Block . . . have been quietly

24 ¹ Plaintiffs would not agree to coordinate the timing of this motion with that of H&R Block—the
 25 entity with the most information concerning Plaintiff Smith’s and Goldberg’s arbitration
 26 agreements—and successfully sought to require Google to file its motion first. As a result,
 27 Google supplies the current version of H&R Block’s Online Services Agreement, along with
 28 sworn declarations submitted by H&R Block employees in other matters demonstrating that
agreement to H&R Block’s Online Services Agreement is a standard process for use of H&R
 Block’s online tax-filing services, including during the time period Plaintiffs here used H&R
 Block’s products. Google anticipates that H&R Block’s forthcoming motion will provide
 additional information concerning its arbitration agreements that further support Google’s motion.

1 transmitting sensitive financial information to Google"); 38 ("H&R Block, which also has
 2 millions of users, reportedly transmitted information about tax filers' filings to Google").

3 **C. Plaintiffs' Claims Against Google**

4 Smith and Goldberg assert a variety of state and federal claims against Google—all
 5 stemming from their use of H&R Block's online tax-filing services. And despite acknowledging
 6 that H&R Block knowingly transmits its chosen data to Google Analytics, Plaintiffs' claims all
 7 contend that Google unlawfully intercepted those communications without consent.

8 **Counts 1, 4, 6:** Plaintiffs allege that Google intercepted communications between them and
 9 H&R Block, in which they had a "reasonable expectation of privacy." *Id.* ¶¶ 56–64, 80–93, 101–
 10 06.

11 **Count 2:** Plaintiffs allege that Google used a recording device to "eavesdrop" on
 12 confidential communications between them and H&R Block in which they had a "reasonable
 13 expectation of privacy." *Id.* ¶¶ 65–72.

14 **Counts 3 & 5:** Plaintiffs claim that, "by implementing Google's wiretap," Google furnished
 15 a wiretap device that is "primarily or exclusively designed for eavesdropping." *Id.* ¶¶ 73–79; 94–
 16 100.

17 **III. ARGUMENT**

18 The FAA permits non-signatories to an arbitration agreement to rely on state-law equitable
 19 estoppel doctrines to enforce the agreement. *See GE Energy Power Conversion France SAS, Corp*
 20 *v. Outokumpu Stainless USA, LLC, et al.*, 140 S. Ct. 1637, 1643–44 (2020). Under California law,
 21 non-signatories to an arbitration agreement (such as Google, in this case) can compel arbitration in
 22 either of two different circumstances (the "Goldman prongs"):

23 (1) [W]hen a signatory must rely on the terms of the written agreement in asserting its
 24 claims against the nonsignatory or the claims are "intimately founded in and intertwined
 25 with" the underlying contract, and (2) when the signatory alleges substantially
 26 interdependent and concerted misconduct by the nonsignatory and another signatory and
 "the allegations of interdependent misconduct [are] founded in or intimately connected
 with the obligations of the underlying agreement."

1 *Martinez-Gonzalez v. Elkhorn Packing Co., LLC*, 635 F. Supp. 3d 883, 893 (N.D. Cal. 2022)
 2 (quoting *Goldman v. KPMG*, 173 Cal. App. 4th 209, 219-221 (2009)); *see also Metalclad Corp. v.*
 3 *Ventana Environmental Organizational Partnership*, 109 Cal. App. 4th 1705, 1713 (Cal. Dist. Ct.
 4 App. 2003) (equitable estoppel applies to a signatory suing a nonsignatory for “claims that are
 5 ‘based on the same facts and are inherently inseparable’ from arbitrable claims against signatory
 6 defendants.”) Both circumstances are present here.

7 **A. Equitable Estoppel Requires the Plaintiffs to Arbitrate Their Claims Against Google**

8 If the *Hunt* Plaintiffs are bound to arbitrate their claims against H&R Block, Plaintiffs
 9 Smith and Goldberg are bound to arbitrate their derivative claims against Google under both
 10 *Goldman* prongs. *First*, Plaintiffs’ claims against Google rely upon and assume the existence of
 11 their Agreement with H&R Block. Particularly as the Agreement incorporates the Privacy Notice,
 12 which disclosed H&R Block’s use of and disclosure to analytics services, Plaintiffs’ claims are
 13 “intimately founded in and intertwined with” the Agreement. *Second*, Plaintiffs allege
 14 “substantially interdependent and concerted” acts by Google and H&R Block that are “intimately
 15 connected with the obligations of the” Agreement and Privacy Notice. *See id.* at 218–219.

16 **1. The Claims Against Google Are Intertwined with the H&R Block Agreement**

17 As to the first *Goldman* prong, Plaintiffs’ claims against Google are intimately founded and
 18 intertwined with their Agreement with H&R Block.

19 A non-signatory may compel arbitration under the first *Goldman* prong if the causes of
 20 action against the non-signatory “rely on and presume the existence of the contract” with the
 21 signatory. *Boucher v. Alliance Title Co., Inc.*, 127 Cal. App. 4th 262, 269 (2005). To determine
 22 whether the causes of action rely on the agreement, courts look at “whether the claims that the
 23 nonsignatory sought to arbitrate were “intimately founded in and intertwined with” the underlying
 24 contract obligations. *Franklin v. Cnty. Reg’l Med. Ctr.*, 998 F.3d 867, 871 (9th Cir. 2021)
 25 (ordering signatory plaintiff to arbitrate claims against nonsignatory defendant). The focus of the
 26 inquiry is on the nature of the underlying claims asserted by the plaintiff against the non-signatory.
 27 *Boucher*, 127 Cal. App. 4th at 272. Here, Plaintiffs’ claims against Google are intimately
 28

1 intertwined with and rely upon the Agreement and Privacy Notice between H&R Block and
 2 Plaintiffs Smith and Goldberg.

3 *First*, each of Plaintiffs Smith’s and Goldberg’s claims arise from their use of H&R
 4 Block’s online tax-filing service. Neither Smith nor Goldberg could make use of those services
 5 without agreeing to H&R Block’s Online Services Agreement. Anderson Decl., Ex. A
 6 (Schuessler Decl. ¶¶ 3–4); Ex. B at 1 (“You may use H&R Block’s Products and Services only if
 7 you agree to all the terms of the Agreement.”); Ex. C (Gibson Decl. ¶ 8). But for their use of
 8 H&R Block’s services subject to the Agreement, there could be no claims against Google.

9 *Second*, each of the relevant claims requires consideration of whether the parties to the
 10 “communication”—Smith, Goldberg, and H&R Block—consented to the transmission of data to
 11 Google. Compl. ¶¶ 58, 68, 90, 104. The Agreement, which includes the Privacy Notice, is the
 12 mechanism by which Plaintiffs agreed to H&R Block’s collection and transmission of their data
 13 for analytics purposes. *See Del Vecchio v. Amazon.com Inc.*, No. C11-366-RSL, 2011 WL
 14 6325910, at *4 (W.D. Wash. Dec. 1, 2011) (where defendant’s conditions of use and privacy
 15 notice disclosed use of cookies to collect information, plaintiffs’ use of the defendant’s site to
 16 make purchase was an implied acceptance of that fact).²

17 *Third*, Plaintiffs’ federal wiretap claim fails upon showing that one party to the
 18 communication has consented to the interception. *See Doe v. Google LLC*, No. 23-cv-02431-VC,
 19 2023 WL 6882766, at *2 (N.D. Cal. Oct. 18, 2023) (finding the website owners had consented to
 20 the use of Google Analytics on their web properties). Once again, the Agreement and Privacy
 21 Notice evidence H&R Block’s consent to the use of Google Analytics. In order to negate that
 22 consent, Plaintiffs must show that the interception was done for some criminal or tortious purpose,
 23 independent of the interception itself. *Id.* (citing *Sussman v. ABC, Inc.*, 186 F.3d 1200, 1202 (9th
 24 Cir. 1999)). In an effort to negate H&R Block’s obvious consent, Plaintiffs vaguely allege that the
 25 alleged interception was “done in furtherance of one or more crimes . . . and tortious invasion of

26 ² Additionally, Plaintiffs’ section 632 claim under CIPA requires showing a reasonable
 27 expectation that the communication would be confidential. This inquiry considers the agreements
 28 of the parties and any related privacy notices. *See White v. FIA Card Servs., N.A.*, No. 12-cv-2034
 AJB, 2013 WL 756292, at *4 (S.D. Cal. Feb. 26, 2013).

1 privacy.” Compl. ¶ 91. It’s anyone’s guess what these “one or more crimes” are, but “tortious
 2 invasion of privacy” requires showing a reasonable expectation of privacy in the circumstances.
 3 *In re Yahoo Mail Litig.*, 7 F. Supp. 3d 1016, 1038 (N.D. Cal. 2014). The H&R Block Agreement
 4 and Privacy Notice delineate Plaintiffs’ reasonable expectations of privacy on the H&R Block
 5 website. *See White*, 2013 WL 756292, at *5 (no reasonable expectation of privacy where
 6 agreement notified consumers that calls may be monitored).

7 In sum, each of the claims of Plaintiff Smith and Goldberg against Google rely on, and
 8 assume the existence of, H&R Block’s Agreement and Privacy Notice. The first *Goldman* test is
 9 met, and Plaintiffs are bound to arbitrate their claims against Google.

10 **2. Plaintiffs Allege Interdependent Conduct By Google and H&R Block**

11 Satisfaction of the first *Goldman* test alone is a sufficient basis for this Court to compel
 12 arbitration. Even if it were not, Plaintiffs’ claims also meet the second *Goldman* test, which is
 13 satisfied by allegations of interdependent and concerted misconduct between the signatory and
 14 non-signatory that is “founded in or intimately connected with the obligations in the underlying
 15 agreement.” *See Goldman*, 173 Cal. App. 4th at 219. Key to this inquiry is the connection
 16 between the interdependent and concerted misconduct and the obligations imposed in the
 17 underlying agreement. *Id.*

18 The interdependent nature of the claims against Google and the conduct of H&R Block that
 19 is governed by the terms is apparent on the face of the Complaint. Plaintiffs acknowledge that
 20 H&R Block decided to implement Google Analytics. *See* Compl. ¶¶ 25 (noting that Google
 21 Analytics pixels are something that “website owners add to their website code for each page of
 22 their site”); 36 (H&R Block deployed the pixel on its website). Plaintiffs also acknowledge that
 23 H&R Block was responsible for configuring Google Analytics tools to collect the data it wished.
 24 *Id.* ¶¶ 26 (noting websites can configure what data is collected by their Google Analytics tools);
 25 35 (websites can customize the data they wish to collect with Google Tag pixel). Plaintiffs also
 26 openly contend that their claims stem from H&R Block’s decision to transmit data to Google
 27 analytics. *Id.* ¶¶ 32 (“[T]he tax filing services such as H&R Block . . . have been quietly

1 transmitting sensitive financial information to Google"); 38 ("H&R Block, which also has
 2 millions of users, reportedly transmitted information about tax filers' filings to Google").

3 This interdependent conduct is intimately connected with the Agreement. As discussed
 4 above, Plaintiffs' claims against Google arise exclusively from their use of H&R Block's online
 5 tax-filing service, and the Agreement governs that use. Further, by entering the Agreement,
 6 Plaintiffs also agreed to the Privacy Notice incorporated therein, which sets forth the data H&R
 7 Block may collect, H&R Block's use of analytics services, and the circumstances and purposes of
 8 H&R Block's disclosure of data. Plaintiffs' allegations that H&R Block improperly shared data
 9 with Google Analytics fall squarely within the scope of the Agreement.

10 Plaintiffs are hard pressed to argue otherwise. In the related case, *Hunt v. Meta Platforms*
 11 *Inc.*, 3:23-cv-04953, which centers on H&R Block's use of third-party analytics software from
 12 Google and Meta, the plaintiffs were explicit in tying the alleged disclosure to H&R Block's
 13 Privacy Notice. *See Hunt Compl.* ¶¶ 100–115 (Dkt. 1 in 3:23-cv-04953). Plaintiffs here
 14 affirmatively sought to relate *Hunt* with this action, characterizing *Hunt* as "a belated tagalong
 15 action" that copied existing allegations, though adding H&R Block as a defendant. Dkt. 34 at 1.
 16 Plaintiffs in this action went so far as to say that "the gravamen of the claims and key facts in
 17 dispute in *Hunt* continue to be largely identical" to those in this case. *Id.* at 2.

18 The linchpin of equitable estoppel is fairness. *Goldman*, 173 Cal. App. 4th at 220. There
 19 is no fairness in Plaintiffs' seeking to assert claims against Google wholly based upon their use of
 20 H&R Block's services—concerning H&R Block's alleged disclosure of information to Google, all
 21 governed by the Agreement and incorporated Privacy Notice—yet evading their agreement to
 22 arbitrate by failing to name H&R Block as a defendant and omitting the key context supplied in
 23 *Hunt* that clearly invokes equitable estoppel. The Court should disregard the Plaintiffs' artful
 24 pleading and compel arbitration.

25 **B. The Court Should Stay Any H&R Block-Related Claims Pending Arbitration**

26 Should the Court order that the *Hunt* plaintiffs must arbitrate their claims against H&R
 27 Block but not those against Google, the Court should stay all claims based upon H&R Block's
 28

1 disclosure of information pending conclusion of the Plaintiffs' arbitration against H&R Block.

2 Courts have broad discretion to stay litigation among non-arbitrating parties pending
 3 arbitration. *See, e.g., Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 21 n.23
 4 (1983) (district court has "discretion" to "stay litigation among the non-arbitrating parties pending
 5 the outcome of the arbitration."). The Court may consider factors such as judicial economy and
 6 efficiency and the risk of inconsistent results in exercising such discretion. *See BrowserCam, Inc.*
 7 *v. Gomez, Inc.*, No. C 08-02959 WHA, 2009 WL 210513, at *3 (N.D. Cal. Jan. 27, 2009) (the
 8 court may stay non-arbitrable claims pending arbitration for the sake of economy and efficiency);
 9 *Morales v. Lexxiom, Inc.*, CV 09-6549 SVW, 2010 WL 11507515, at *11 (C.D. Cal Jan. 29, 2010)
 10 (considering risk of inconsistent findings to support stay pending arbitration).

11 *First*, economy and efficiency favor a stay pending resolution of Plaintiffs' arbitration with
 12 H&R Block. A substantial portion of the Plaintiffs' case concerns H&R Block's alleged
 13 disclosure of information to Google Analytics. A stay will thus avoid a substantial amount of
 14 discovery specific to H&R Block and the class that used its services. Further, because Plaintiffs in
 15 this action elected not to add the allegedly disclosing party—H&R Block—as a defendant in this
 16 action, a stay would avoid the need for significant third-party discovery in this action. Such
 17 information may be obtained directly from H&R Block in arbitration pursuant to the applicable
 18 arbitral rules. *See GSC Dev. Inc. v. Jinlong Indus. Co., Ltd.*, No. SACV 17-01763-CJC, 2017 WL
 19 11643828, at *3 (C.D. Cal. Dec. 4, 2017) (staying litigation pending arbitration to avoid
 20 duplicative discovery efforts and risk of conflicting judgments).

21 *Second*, there is a substantial risk of inconsistent results should claims against Google and
 22 H&R Block proceed in parallel. The claims against Google require resolution of matters
 23 inextricably bound up in issues involving H&R Block and the Agreement and Privacy Notice.
 24 These include: (1) whether the Plaintiffs consented to H&R Block's use of Google Analytics by
 25 way of the Agreement and Privacy Notice; (2) whether H&R Block consented to the collection of
 26 the relevant data; (3) whether the Plaintiffs had a reasonable expectation of privacy in the data
 27 collected by H&R Block; and (4) whether H&R Block in fact disclosed any tax-related
 28 information. Any arbitration with H&R Block will have to confront these issues, and their

1 resolution will impact, or even be dispositive of, Plaintiffs' claims against Google. *Bui v.*
2 *Northrop Grumman Sys. Corp.*, 15-CV-1397-WQH-WVG, 2019 WL 13166662, at *2 (S.D. Cal.
3 Jan. 29, 2019) (staying action pending arbitration where the same issues had to be decided in both
4 the arbitration and litigation, presenting a risk of inconsistent rulings); *Morales*, 2010 WL
5 11507515, at *11 (granting stay to avoid prejudice of inconsistent results); *Bischoff v. DirectTV,*
6 Inc., 180 F. Supp. 2d 1097, 1114 (C.D. Cal. 2002) (“[A] failure to stay the action may lead to
7 inconsistent findings which will hinder the pursuit of judicial efficiency.”).

8 To avoid unnecessary expenditure of resources and the risk of inconsistent findings, Google
9 respectfully requests that the Court stay all claims related to H&R Block pending the resolution of
10 any arbitration it may order as to H&R Block.

11 **IV. CONCLUSION**

12 For the foregoing reasons, Google respectfully requests that this Court grant this motion to
13 compel arbitration if it orders arbitration of the claims against H&R Block in *Hunt*. Alternatively,
14 if the Court compels the Plaintiffs to arbitrate against H&R Block but not Google, the Court
15 should stay proceedings as to the H&R Block plaintiffs pending the outcome of arbitration.

16
17 Date: December 15, 2023

WILLKIE FARR & GALLAGHER LLP

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19 Benedict Hur
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